LEONG KUM WHAY & ANOR *a*

v.

AMERICAN INTERNATIONAL ASSURANCE CO LTD

HIGH COURT MALAYA, KUALA LUMPUR *b*
MOHD NOOR AHMAD J
[CIVIL SUIT NO: S1-22-485-1993]
25 SEPTEMBER 1998

INSURANCE: *Life insurance - Non-disclosure of other existing policies - Whether policies taken were valid - Requirement that life policy cannot be questioned after two years from date of which it is effected - Insurance Act 1963, s. 15C(4) - Whether policies taken were within definition of life policy under the Act - Whether first policy was caught by s. 15C(4) - Whether defendant proved that non-disclosure was a material fact - Whether two-year period had not expired in relation to second policy - Whether disclosure would have influenced defendant in accepting proposals* *c* *d*

In this case, the 1st plaintiff had taken out two insurance policies from the defendant wherein the 2nd plaintiff was the beneficiary. The first policy was originally for the period 10 August 1989 to 9 August 1990 and was subsequently renewed yearly by mutual consent from 10 August 1990 to 9 August 1991 and from 10 August 1991 to 9 August 1992. It was issued by the defendant pursuant to a proposal dated 9 August 1989. The second policy was originally for the period 7 March 1991 to 6 March 1992 and was subsequently renewed by mutual consent from 7 March 1992 to 6 March 1993. It was issued by the defendant pursuant to a proposal dated 5 March 1991. *e* *f*

When the 1st plaintiff submitted the respective proposals, he had existing personal accident policies with other insurance companies which he did not disclose, except in the proposal of the second policy, in which only one policy was disclosed. *g*

During the period of coverage under the policies, the 1st plaintiff was struck by a falling object from the ceiling in his house which resulted in permanent total blindness to his right eye. The 1st plaintiff sought to claim for the aforesaid under the said policies. *h*

The defendant sought to avoid liability on the ground that the said policies had been obtained by the 1st plaintiff by the suppression and/or non-disclosure of material facts, namely, the existing personal accident policies with other insurance companies. *i*

The issue before this court was whether s. 15C(4) of the Insurance Act 1963 ('the Act') applied and whether the non-disclosure of the alleged material facts would have influenced the defendant in deciding whether or not to accept the proposals.

Held:

[1] A scrutiny of the impugned policies revealed that the coverage was not in respect of personal accident, disease or sickness only but also for natural death, accidental death, dismemberment, disability and medical expenses. Hence, they fell under the definition of life policy under the Act and s. 15C(4) applied.

[2] The first policy was effected on 9 August 1989 and the accident happened on 26 June 1993. The two-year requirement under the said section had expired. As such, the first policy could not be called into question by the defendant on the ground that the statement made in the proposal for insurance was inaccurate or false **unless** the defendant showed that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by the 1st plaintiff with the knowledge that the statement was false or that it suppressed a material fact. From the submission tendered, other than by contending that s. 15C(4) of the Act did not apply and that the information supplied formed the basis of the contract, the defendant failed to prove the required ingredients. As such, the first policy was valid and the defendant was liable thereunder.

[3] In respect of the second policy, the two-year period had not expired at the time of the accident. Hence, s. 15C(4) of the Act did not apply. The burden was on the defendant to show that the information on the other policies not disclosed or suppressed would have influenced the defendant in deciding whether or not to accept the risk and in fixing the amount of premium. The defendant failed to demonstrate such. Even if the other policies had been disclosed in the proposals, it would not have influenced the defendant to decide whether or not to accept the risk and fix the amount of premium.

[4] In this type of life insurance, the number of other policies was not a material fact as the defendant would have accepted the risk in any event. Further, the number of other policies would not affect the amount of the premium because the determination of the quantum was based on factors such as age, health, previous refusals, claim history and previous convictions. Thus, the policy was valid and the defendant could not avoid its liabilities thereunder.

[Order accordingly.]

Legislation referred to:
Insurance Act 1963, ss. 5, 15C(4)

Other source referred to:
Law of Insurance, Poh Chu Chai, 3rd edn, pp 109-134

For the plaintiffs - Manoharan Malayalam; M/s Karpal Singh & Co
For the defendant - Andrew Khoo; M/s Khoo & Sidhu

Reported by Usha Thiagarajah

JUDGMENT

Mohd Noor Ahmad J:

The plaintiffs' claim is based on two insurance policies issued by the defendant (hereinafter referred to as 'the first policy' and 'the second policy' respectively). The first policy was originally for the period 10 August 1989 to 9 August 1990 and was subsequently renewed yearly by mutual consent from 10 August 1990 to 9 August 1991 and from 10 August 1991 to 9 August 1992. It was issued by the defendant pursuant to a proposal dated 9 August 1989. The second policy was originally for the period 7 March 1991 to 6 March 1992 and was subsequently renewed by mutual consent from 7 March 1992 to 6 March 1993. It was issued by the defendant pursuant to a proposal dated 5 March 1991. The policies were taken out by plaintiff 1 and plaintiff 2 is the beneficiary. At the time of the submission of the respective proposals plaintiff 1 had several other existing personal accident policies with other insurance companies which were not disclosed in the proposals except in the proposal for the second policy where only one policy was disclosed.

During the period of coverage under the policies plaintiff l's face was struck by a falling object from the ceiling in his house which resulted in permanent total blindness to his right eye.

The defendant seeks to avoid liabilities under the policies on the ground that the policies had been obtained by the plaintiffs by the suppression and/or non-disclosure of material facts, that is to say, the other existing personal accident policies with other insurance companies.

The parties agreed that the case be decided simply on written submissions on the issue of law without the need to call witnesses, based on the agreed facts. After having scrutinised their respective submissions, in view of s. 15C(4) of the Insurance Act 1963, I ordered the parties to reconsider whether they could agree on the facts relating to why and how such suppression and/or non-disclosure of the alleged material facts had influenced the defendant in deciding whether or not to accept the proposals, fix the premium and issue the policies

and if the facts could be agreed upon the parties would be given the liberty to submit further on the issue, otherwise I would proceed to hear the witnesses on that issue only. When the parties came back I was informed that they preferred to submit further on s. 15C(4) of the Act and the issue whether the informations supplied in the proposals formed the basis of the contract between the parties. Hence, further written submissions were submitted for my consideration. It is evident from the further submission that other than by contending that s. 15C(4) of the Act does not apply and that the informations supplied formed the basis of the contract, the defendant failed to demonstrate why and how such suppression and/or non-disclosure of facts had influenced the defendant and whether those facts are material. I have no other alternatives but to proceed with my consideration based only on the written submissions and the further written submissions.

(i) It is trite that the incidence of double insurance does not apply to an insurance relating to human life as in this case. To my mind, the only issue for my consideration is whether the provision of s. 15C(4) of the Act applies. The section reads –

> No life policy effected before the commencement of this section shall, after the expiry of two years from such commencement, and no life policy effected after the commencement of this section shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in a report of a doctor, referee, or any person, or in a document leading to the issue of the policy, was inaccurate or false unless the insurer shows that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by the policy holder with the knowledge that the statement was false or that it suppressed a material fact.

Section 5 in the first schedule of the Act defines life policy as –

> 'life policy' means any policy by which payment of policy moneys is insured on death (otherwise than by way of insurance against personal accident, disease or sickness **only**) or on the happening of any contingency dependent on the termination or continuance of human life, and includes a policy which is subject to payment of premiums for a term dependent on the termination or continuance of human life and a policy securing the grant of any annuity for such a term.

The **underlined** is mine. The word "only" appearing in the phrase within the brackets denotes the intention of Parliament to exclude any insurance against personal accident, disease or sickness only from the definition and thus, from the application of the provision of s. 15C(4) of the Act.

A scrutiny of the impugned policies reveals that under the title BENEFITS the defendant had undertaken to provide indemnity for loss of life, sight,

dismemberment, disability and medical expense and other specified losses as stated in the policy information page within the time limits indicated in the policy contract. Part 1 makes stipulation for natural death benefit and part II provides for supplementary benefits, that is to say, accidental death benefit (s. I) and dismemberment and loss of sight indemnity (s. II). Therefore, it is manifestly evident that the coverage is not in respect of personal accident, disease or sickness only but also for natural death, accidental death, dismemberment, disability and medical expense. Hence, the impugned policies fall under the definition of life policy. That being the case, the provision of s. 15C(4) of the Act applies.

The first policy was effected on 9 August 1989 and the accident happened on 26 June 1993, that is to say, the two-year requirement under the section had expired. Hence, it is caught by the section. Under the section, the first policy cannot be called in question by the defendant on the ground that the statement made in the proposal for insurance was inaccurate or false unless the defendant shows that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by plaintiff 1 with the knowledge that the statement was false or that it suppressed a material fact. To my mind, as the defendant failed to prove the required ingredients as I have stated in para. 4 above, the first policy is valid and therefore, the defendant cannot avoid its liabilities under it.

In respect of the second policy as it was effected on 5 March 1991 the two-year period had not expired at the time of the accident. Hence, the provision of s. 15C(4) of the Act does not apply. Be that as it may, to my mind, the burden is on the defendant to show that the information on the other policies not disclosed or suppressed had influenced the defendant in deciding whether or not to accept the risk and in fixing the amount of premium. The defendant failed to demonstrate such. In my view even if the other policies had been disclosed in the proposals it would not have influenced the defendant to decide whether or not to accept the risk and in fixing the amount of premium. In this type of life insurance the number of other policies is not a material fact because the defendant would have accepted the risk in any event. Also, the number of other policies would not affect the amount of the premium because the determination of the quantum is based on factors such as age, health, previous refusals, claim history and previous convictions (see Poh Chu Chai on the *Law of Insurance* 3rd edn, at pp. 109 to 134). Therefore, the second policy is valid and hence, the defendant cannot avoid its liabilities thereunder.

Therefore, judgment is entered against the defendant as prayed.